

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MAX BIRMINGHAM,

Plaintiff,

v.

DANA NESSEL,

Defendant.

Hon. Janet T. Neff

Case No. 1:20-cv-329

ORDER

This matter is before the Court on Plaintiff's Motion for Leave to File an Amended Complaint. (ECF No. 45). Plaintiff initiated this action challenging the constitutionality of Michigan's so-called seduction statute. *See* Mich. Comp. Laws § 750.532. Plaintiff subsequently amended his complaint. (ECF No. 11). The Court also denied later requests by Plaintiff to amend his complaint. (ECF No. 36). Plaintiff now moves again to amend his complaint. For the reasons articulated herein, Plaintiff's motion will be denied.

Given the timing of Plaintiff's motion, such is governed by Federal Rule of Civil Procedure 15(b), which requires Plaintiff to obtain leave of court which shall be freely given when justice so requires. The factors relevant when considering a motion to amend include: (1) undue delay in filing, (2) lack of notice to the opposing party, (3) bad

faith by the moving party, (4) repeated failure to cure deficiencies by previous amendments, (5) undue prejudice to the opposing party, and (6) futility of amendment. *See Wade v. Knoxville Utilities Board*, 259 F.3d 452, 458 (6th Cir. 2001).

On September 16, 2020, the undersigned issued a Report and Recommendation recommending that this matter be dismissed on the ground that Plaintiff lacks standing. Plaintiff's objections to this recommendation are pending. Plaintiff's attempt to again amend his complaint is untimely and constitutes bad faith. Moreover, to the extent Plaintiff attempts to overcome the shortcomings identified in the Report and Recommendation, Plaintiff could have addressed such long ago. Finally, while Plaintiff argues at length why the pending Report and Recommendation should be rejected, he has failed to articulate good cause to amend his complaint at such a late date. Accordingly, Plaintiff's motion is denied.

IT IS SO ORDERED.

Date: November 17, 2020

/s/ Phillip J. Green
PHILLIP J. GREEN
United States Magistrate Judge